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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant: Reddy

Serial No.: 09/002,133

Filed: December 31, 1997

For: FLAVORED FOOD PRODUCTS

RECEIVED  
AUG 29 2003  
TC 1700

Group: 1761  
Examiner: C. Paden  
Edgewater, New Jersey 07020  
August 21, 2003

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**BRIEF FOR APPELLANTS**

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 2233-1450

Sir:

Enclosed herewith are three (3) copies of an Appeal Brief for Appellant.

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Respectfully submitted,

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**PATENT**

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### **I. REAL PARTY IN INTEREST**

The Real Party in Interest in this Appeal is Lipton, Division of Conopco, Inc., a corporation of the State of New York. Lipton presently does business under the name of Unilever Bestfoods North America, which is a division of Conopco, Inc. Conopco, Inc. is owned by Unilever United States which is owned by Unilever N.V. and Unilever PLC.

### **II. RELATED APPEALS AND INTERFERENCES**

Neither the Appellant, his legal representatives nor the Assignee are aware of any other Appeals or Interferences relating to the present Appeal.

### **III. STATUS OF CLAIMS**

This Appeal is taken from the Final Rejection of claims 11 through 26, the pending claims in the application. A copy of the appealed claims is attached to this Brief as an Appendix. Claims 1-10 are cancelled without prejudice.

#### **IV. STATUS OF AMENDMENTS**

No amendments to the specification or claims were filed after final rejection.

#### **V. SUMMARY OF THE INVENTION**

It seems well accepted that consumers are unwilling to embrace low fat products which have inferior organoleptic properties. Unfortunately, it is difficult to prepare very low triglyceride fat products wherein fat soluble lipophilic flavors are well perceived during ingestion. (Page 1, line 22 to Page 2, line 4). At extremely low triglyceride fat levels, the lipophilic flavors tend not to be well perceived, presumably due to the absence or minimal presence of the usual triglyceride fat carriers for such flavors (Page 1, lines 22-23 to Page 2, line 4).

In the present invention, very low fat foods comprising an emulsion can be provided with lipophilic flavor by incorporating the flavor into a gelled biopolymer phase. (Page 3, lines 5-12). This facilitates control of flavor release in that flavor release will be strongly influenced by the melting characteristics of the biopolymer (Page 3, lines 5-12). Where such the product is in the preferred form, it includes

separate (a) structuring emulsifier phases and (b) gelled biopolymer phases, and lipophilic flavor is incorporated in the gelled biopolymer phase (page 3, lines 5-12).

The present invention is most advantageously utilized in foods which are themselves emulsions, such as spreads (page 3, lines 1-3). Other foods which are emulsions in which the invention may be used are mayonnaise and other dressings.

The level of triglyceride fat in the emulsions, and preferably also the foods, of the invention may be limited to 5 wt. % or less, especially less than 5 wt. %, most preferably from 0.1 to 3 wt. % (page 4, lines 1-3).

In another aspect of the invention, foods are prepared by preparing a structuring phase of edible surfactant in a first stream, preparing a gelled biopolymer including lipophilic flavor in a second stream and combining the first and second streams to form an edible emulsion (page 4, lines 15-20). It is preferred that the structuring phase of edible surfactant is a mesomorphic phase.

## **VI. ISSUES AS FRAMED BY THE FINAL REJECTION**

The issue is as follows:

Would one of ordinary skill in the art, upon reading Heertje et al., U.S. Patent No. 5,652,011 in view of Singer et al., U.S. Patent No. 5,202,146 find it obvious to flavor Heertje's spread, by including a lipophilic flavor in the gelled biopolymer phase, thereby controlling flavor release of the lipophilic flavor by the gelled biopolymer.

## **VII. GROUPING OF CLAIMS**

Appellants submit that the following group of claims stand and fall together:

- I.      Claims 11, 12, 20, 22, 23-26
- II.     Claims 13-19
- III.    Claim 21
- IV.    Claims 25-26

### VIII. APPELLANTS' ARGUMENTS

Singer et al., U.S. Patent No. 5,202,146 is directed to flavor delivery systems for nonfat and low fat foods in which fat components have been replaced by non-lipid fat substitutes. The systems comprise fat globules, into which elevated levels of fat soluble flavor compounds have been loaded, and which are incorporated into nonfat and low fat food products so that the fat soluble flavor compounds are released in a more natural and familiar sequence. Homogenization is said to result in an emulsion comprising stabilized fat globules including fat soluble flavor compounds. The Office points to no teaching in Singer et al. that their loaded fat globules could or should be incorporated into a gelled biopolymer phase of a food having at least one other phase like that of Heertje et al.

Heertje et al., U.S. Patent No. 5,652,011 is directed in Example 6 to a spread formed from 50% of a mesomorphic phase and 50% from an aqueous phase. The aqueous phase comprised a slurry of gelled particles which was combined with the mesomorphic phase in a static mixer. The gelled aqueous phase included gelatin and 0.0048% of an unspecified flavor. The mesomorphic phase is formed from lipidic substances, in accordance with Heertje's preference (see Col. 4, lines 4-10).

Applicant submits that absent the teaching of his specification one of ordinary skill would not be led to incorporate the Singer et al. flavors into the gelled particles of the Heertje et al. Example 6 spreads. For one thing, Singer et al. focus their invention on products where fat components have been replaced by non-lipid fat substitutes. Moreover, the Office points to no teaching in Singer et al. that their flavor system would work if the flavor were incorporated into the gelled biopolymer phase of Heertje's multiphase Example 6 food.

Use of gelled biopolymer with lipophilic flavor in the claims of Group I are patentable for the reasons given above. Claims 13-19 Group II further distinguish by reciting a lower level for the triglyceride in the product or emulsion. Claim 21 further distinguishes examples such as dressings by reciting a plastic spread. The claims of Groups I-III further distinguish by reciting the surfactant phase. Claims 25 and 26 (Group IV) are also patentable for the reasons given above but do not recite the first surfactant phase.

## IX. CONCLUSION

Appellant respectfully requests that the Board of Patent Appeals and Interferences reverse the Examiner's final rejection of claims 11 through 26 under 35 U.S.C. 103.

Respectfully submitted,

  
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16. The food according to claim 15 wherein said emulsion comprises from 1 to 2 wt. % triglyceride fat.
17. The food according to claim 12 comprising from 0.1 to 5 wt. % triglyceride fat, based on the total weight of the food.
18. The food according to claim 17 comprising from 0.2 to less than 5 wt. % triglyceride fat, based on the total weight of the food.
19. The food according to claim 18 comprising 1-3 wt. % triglyceride fat, based on the total weight of the food.
20. The food according to claim 12 wherein said food is an edible spread.
21. The food according to claim 20 wherein said food is an edible, plasticized spread.
22. The food according to claim 20 wherein said food is butter-flavored.
23. The food according to claim 12 comprising from 0.001 to 0.5 wt. %, based on the total weight of the food, lipophilic flavor.

24. The food according to claim 12 comprising from 0.001 to 0.5 wt. %, based on the weight of the emulsion, lipophilic flavor.
25. A food comprising an emulsion having at least two phases, said emulsion including a phase of gelled biopolymer, said gelled biopolymer phase comprising triglyceride fat at a level of 5 wt. % or less based on the weight of the emulsion and a lipophilic flavor.
26. The food according to claim 1 comprising a 0.0005% lipophilic flavor.